

“Environmental Results through Innovative Policy and Law”

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It is a pleasure to be in Munich again. I want to thank the Bavarian Business Association for the invitation to speak. I am honored to be introduced by Dr. Weigand, a great partner of Wisconsin and a very good friend.

This is the second time that I have appeared with Dr. Weigand. I am sure that he remembers the first time in Milwaukee in 1999 at the conference of the Multi-State Working Group. Dr. Weigand was the hit of the event when he described the differences between the Prussian way and Roman way of enforcing environmental law. He also said many other important things.

I bring greetings from Wisconsin Governor Jim Doyle, Secretary of Natural Resources Scott Hassett and State Senator Neal Kedzie. Secretary Hassett and Senator Kedzie were the leaders of the 2004 delegation to learn about your approach to self-responsibility and sustainability.

Wisconsin delegations have been to Bavaria several times under our reform agreement to see the progress under the Bavaria Pact. We have visited paper mills, printing companies, building companies, power plants, industries, brownfield sites and much more. Each time, we have been impressed and have learned from you.

Today, Governor Doyle is giving his state of the state address in the Capitol and will report on the economic progress Wisconsin has made in the last three years. As a reference, Wisconsin's adjusted 2005 unemployment rate was 4.7 percent. That is down from 4.9 percent in 2004.

Some of the economic progress has been due to the changes in our state's regulatory system. These reforms included the Job Creation Act that made environmental permitting more efficient. They also included the Green Tier

law that is molded after the Bavaria Pact. Green Tier implementation is being led by some of the businesses that visited Bavaria. Senator Kedzie was an author of Green Tier that was signed by Governor Doyle.

And so I am here today to thank the Free State of Bavaria for its hospitality, its ideas that contributed to Green Tier and the inspiration it provided to our delegations. We share the vision of Stateminister Dr. Werner Schnappauf who sees a new paradigm for environmental and economic performance through self- responsibility.

I also bring greetings from the Multi-State Working Group on Environmental Performance of which I am president. I have a special greeting from Dr. Bob Stephens, our former president and now head of our international effort of which Bavaria is a part. Dr. Stephens is with the UN Environmental Program.

My topic is environmental results through innovative policy and law. My remarks are my own opinions and come from more than 30 years of experience in state government, including assignments as the director of two state commissions on efficiency, effectiveness and government organization.

In my duties on the government commissions, I heard that government prefers control over results. I am not sure if that is true. But it is useful to see the circumstances we have been given as government employees.

There are certain assumptions behind each law. These assumptions affect not only the law and its wording but the structure and culture of government that administers that law. In the case of the environment, many laws are based on fear, suspicion and a goal of minimal achievement. They are based on the assumption that business is bad or inclined to do only bad things.

These factors are reflected in the law itself, the rules that implement the law, the policies that implement the rules and the guidance that implements the policies. I call this regulatory governing. Regulatory governing is not friendly to innovation and it can be unfriendly to pursuing superior results. I emphasize that regulatory governing has produced environmental improvement for which it should be recognized. This is my background.

My remarks today make three points. First, America's regulatory governing approach is under question. Second, collaborative governance is emerging

as its complement. Third, Wisconsin is a laboratory where the two can be effectively balanced to produce greater environmental and economic results.

My first major point is about regulatory governing being under question.

One of America's foremost regulatory scholars is Dan Fiorino and his insights here today from a federal level are always interesting. My focus is at the state level.

In the state, I see three things that are reducing the influence of traditional approaches:

First, because of how we defined the problem, some citizens think the environmental job is nearly done. There is not an urgency, especially compared to problems in health care, aging, education, homeland security, public safety and jobs. Environmental compliance is in the high 90 percent range, especially in states like Wisconsin. If our definition of success is compliance, the numbers suggest the job is nearly done. As state regulators who are focused on compliance, we risk defining ourselves out of a job.

Second, our state focus is jobs. Governor Doyle's two top priorities were to balance the budget and create good jobs. Our Job Creation Act was meant to signal business that the DNR would work more efficiently. We got the message and it is a message that will continue because pollution laws are so focused on manufacturers that are under great competitive pressure. Time is money and we cannot waste the time of business.

Third, rules cannot solve remaining environmental problems and may even get in the way. It is possible that local, state and federal rules might unintentionally promote sprawl. Even when we adopt rules like on non-point-source water pollution, they don't go into full effect without adequate funds and funding always seem to fall short of need. In addition, many environmental agencies are shrinking. So we have limited capacity.

My second major point describes an emerging and hopeful concept I call collaborative governance. It is a complementary problem solving concept that can respond to environmental needs in the broadest sense.

Collaborative governance has several key characteristics.

First, it is about civil engagement, often among multiple parties. Collaboration means parties discuss matters in a climate of greater trust or by recognizing common interests. In some instances the collaboration might happen formally and be a one-time experience such as in reaching a performance agreement. In other instances it can be ongoing and even foster a community of interest.

Second, it is focused on mutual-gain. It is not win-lose. Mutual gain means that the parties work to achieve greater things together than they could alone. Sometimes this requires patience and a timeline where one party “gains” before another.

Third, the approaches and agreements can stretch to fit the situation at hand. It is not one size fits all. The agreement might cover a portion of a city or forest land. It might be placed over a supply chain or a problem that is diffused among various parties such as a chemical, heavy metal or greenhouse gas emissions. This is called the “bigger bubble” approach.

There are many examples of collaborative governance. One is the American Chemistry Council’s Responsible Care Program. Another is the Asia-Pacific Partnership on Clean Development and Climate. Up to now, many agreements have not been sanctioned in law. That fact has exposed some of them to criticism.

I believe that collaborative governance is the future, especially if recognized in law. It will be even more attractive if it develops credible measures that describe the categories of potential results such as environment, economy and community.

My third and final major point is that collaborative governance, within law, is already happening and it is called Wisconsin’s Green Tier. This could make Wisconsin a laboratory where there is a nexus of policies, research, responsible businesses, and environmentally dedicated citizens.

There is a saying that Wisconsin is small enough to manage and large enough to matter. Evidence is seen in the policies of the Progressive Era and more recently welfare reform that were copied elsewhere, including in Europe and Germany. I think it can happen again through Green Tier. Two weeks ago a seminar at the Tokyo Law School heard about Green Tier and attendees responded very favorably.

On February 25, 1998, I was in Palo Alto, California at a US-European environmental management system roundtable and sat next to a gentleman named Matthias Weigand. On that day the seeds of Green Tier were planted. We call them the seeds from the Bavaria Pact. Eight years and three DNR secretaries later, Wisconsin has a law that is based on a “we can” approach to do better than the environmental minimum and to foster community cooperation and trust.

The path to Green Tier is on the DNR web site. But before reporting results I must emphasize that Wisconsin deliberately decided to create a safe place in law for innovation to happen. Without that safe place in law, we believed there were too many reasons why businesses, government employees and citizens would not take the risk to be an environmental innovator. When it comes to the environment, America’s culture discourages risk-taking, even if it means trying to beyond the minimum.

We heard the stories from within EPA where opponents of the innovative Project X-L intimidated their colleagues with the phrase: “If it’s X-L it’s illegal.” We heard that a job in innovation meant a dead end career in EPA. Whether true or not, we did not want that in Wisconsin and one protection we thought was necessary was for the innovative program to be in law.

Laws that support innovation may not be for everyone. It was a struggle to get some of our employees to agree to a new law. These employees believed that if firms wanted to go beyond the minimum nothing was stopping them. But the truth is that firms had no incentives to do more than the minimum and the fear in the regulatory, legal and political systems discouraged going beyond the bare minimum. So opportunities for environmental greatness were often lost.

Wisconsin wanted a law that inspired environmental greatness. Law is supposed to bring out the best in society. It is about the unity of community over time. Especially in more recent years, that is not what we had from some of the environmental laws on the books from the 1960s and 1970s.

So what can I report from Wisconsin?

When Green Tier became law in 2004 we decided to go slowly. This was a new experience and we had to learn how to use new legal tools like the environmental charter.

Our first legal agreements were signed last October in a two day celebration we called “Green and Growing.” There were bus tours of the projects, an agreement signing with EPA and a conference. At this time I want to recognize the EPA. I first recognize the Office of Policy, Economics and Innovation for helping us through the drafting process. I recognize Jay Benforado, Chuck Kent and Lee Paddock. Second, I recognize the cooperation of EPA Region V in the implementation of Green Tier, especially Norm Niedergang.

To date, we have ten agreements signed or submitted. It is too early to share Green Tier law results but I will give you examples of some goals:

The Wisconsin Scrap Recycling Industry will develop and follow best management practices for mercury and fluid removal as well as exemplary storm water management.

The Wisconsin Builders Association has committed members to superior construction site management, land conservation, native plant management, green building and energy conservation goals.

The American Transmission Company has committed to superior environmental protection and restoration work along its energy corridors.

Megtech Systems manufacturing will produce a model hazardous waste minimization program and share it with other businesses as a teacher.

An idea of the emissions reduction potential of the new law is seen in Green Tier pilot projects that were authorized in 1997. Here are three examples of environmental results under that Green Tier pilot law:

At the Packaging Corporation of America in Tomahawk air emissions were reduced six-and-a-half times more than the standard required under the regulatory governing system.

At the We-Energies Pleasant Prairie Power Plant, land-filling of fly ash was virtually eliminated through beneficial re-use and 1600 railroad cars of coal was not needed by recovering and re-burning previously land-filled ash

Taken together on air emissions, the pilot facilities out-performed similar facilities that were traditionally regulated in five emission categories. This included hazardous emissions where the pilot facilities reduced emissions in the 90 percent range, cutting their share of the statewide total from 12 percent to just 6 percent.

Taken together on hazardous waste generation, the Green Tier pilot facilities out-performed similar facilities. The pilot project facilities reduced waste to less than half of the 1997 benchmark levels.

One of the goals is to create business value and here are three examples:

Cook Composites in Saukville had a difficult relationship with some local citizens. The Green Tier pilot program turned that around so impressively that officials of TOTAL at the firm's headquarters in France visited to see how it was done.

The 3M facility in Menomonie used its Green Tier pilot agreement to cut the time needed to start new processes from several months to three days. 3M's head environmental officer said the Green Tier pilot was the most flexible permit in the US. Facilities from around America are calling for advice.

A third business in the Green Tier pilot program used its flexibility to beat a Chinese competitor on a bid based on speed of response to get the product line changed and product out.

My final point will be around measurement under collaborative governance laws like Green Tier.

Measuring results of collaborative governance must be different than under regulatory governing. It will take time for the new model to develop. The good news is that the University of Wisconsin's La Follette School of Public Affairs began scholarly work on that challenge this year.

Their first question is the most important: What has happened under collaborative governance that would not have happened under regulatory

governing? The categories can be as specific as the state's economy, as complex as its environment, as qualitative as a personal relationship or as profound as trust in the system. All are in play and some of the most subjective might be the most powerful, like a note from an environmentalist whom I asked for input for this talk. He said this to me:

“I would stress the need to work together and the potential demise of true representative decision-making due to pre-conceived positions taken up by some interest groups even before the dialogue begins. If (environmentalists) don't participate (just like voting) one shouldn't gripe about the outcome.”

This is from an environmentalist who was on one of our trips to Bavaria. He offered a toast to the entire group, including business because he said that we all are working for the same things: good jobs and a good environment.

So what is the value that you, as a businessperson place on a comment from an environmentalist who defends your collaborative process when someone else criticizes you?

Equally interesting is the potential of governance data to support a firm in areas with the financial sector, investors, insurers, analysts and corporate governance overseers. The rewards are so significant for business that it is worth the effort.

MSWG calls this the Adam Smith-Rachel Carson Ecological Due-Diligence Initiative. It is on our web site at www.mswg.org. MSWG is cooperating with Wisconsin and a Green Tier business by placing an intern at FTSE4Good in London to explore this concept. We are at the very beginning.

In the end, the real challenge of collaborative governance metrics is to get a true picture of a company and its value to society. This means the value it produces economically, environmentally and socially. The data we collect as regulators fall short, even environmentally short because they only look at regulated aspects and often just at compliance. This called “information regulation.” This is the power of negative information to control company behavior, assuming companies will do bad things.

As regulators we seldom give legitimacy to the environmentally beneficial good deeds a firm produces. We seldom practice what I call “information

motivation.” This is the use of positive information about a company to inspire and reward greater environmental performance. This assumes companies will do great things with the proper policies.

Companies are like people. They are neither all good nor all bad. But most of them want to be good and many are very good. They also have the potential to do great things for the common good.

A governance approach uses performance data to inspire, not to control. The metrics are there in a system of transparency and trust. That is the ideal. Collaborative governance is about ideals and innovation. It can liberate business, government and citizens to work together to make the best better.

That is the goal: To achieve greater environmental results, beyond government, within law. It is what we are trying to do in Wisconsin. It is the basis of MSWG’s Path to Washington and establishing an environmental law that supports innovation and performance. This will be discussed in 2009 at a conference at George Washington University with the 111th Congress and 44th President as the ultimate audience.

There is another goal: To introduce emerging environmental leaders around the world to the principles and competencies of self-responsibility, collaboration and greater performance.

We will do this through several steps that lead up to a world conference in Munich in 2008 as a part of the Bavaria-Wisconsin partnership. There will be follow-up networking meetings in cooperation with MSWG and others in Washington, China and India in the years after that. The result will be a network of 500 emerging leaders in business, government and non-government organizations who believe in and strive for environmental greatness, economic prosperity and collaborative community in the free enterprise system.

Wisconsin is proud to have Bavaria as its regulatory reform partner and MSWG to have Bavaria as a leader in its international network.

We were honored last January when Bavarian State Secretary Emilia Mueller spoke at the UW-La Follette School conference on environmental law in a connected world in Madison, Wisconsin.

We invite Bavarian industry to visit Wisconsin at any time to see the fruits of the seeds planted from the Bavaria Pact. But we especially invite you to the 2007 MSWG conference in Madison. That conference will feature innovative policies from around the world. Bavaria has a story to tell at that conference.

And so in conclusion I am pleased to recall the common heritage of Bavaria and Wisconsin note our promising future together. It is a future that will be bright because of the results we achieve through our policy, law and, most importantly our people.

Thank you.